



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Services Alliance Systems, Inc.

File: B-255361

Date: February 22, 1994

Lawrence W. Luecking for the protester.
Elizabeth DiVecchio Berrigan, Esq., Department of the Army,
for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Where awardee submitted an original bid bond and a photocopied power of attorney, which by its own terms is valid and binding, the agency reasonably concluded that the bid bond is enforceable.
2. Awardee's low bid under a requirements-type solicitation is not materially unbalanced where the solicitation's maximum estimated quantities are reasonably accurate representations of the agency's anticipated actual needs and the bid will result in the lowest cost to the government.

DECISION

Services Alliance Systems, Inc. protests the award of a contract to Ionic Construction under invitation for bids (IFB) No. DAKF01-93-B-0032, issued by the Department of the Army for general maintenance and repairs to buildings and systems at the Presidio of San Francisco. The protester contends that Ionic's bid should have been rejected as nonresponsive because the power of attorney accompanying Ionic's bid bond was defective and because Ionic's bid was unbalanced.

We deny the protest.

The IFB, issued on August 24, 1993, contemplated the award of a firm, fixed-price, indefinite quantity contract for the base year and option year. The IFB contained approximately

600 line items for which a maximum estimated quantity for each line item was listed. Bidders were required to insert a unit price and an extended price for each line item. The IFB, as amended, also required bidders to submit with their bids a bid bond in the amount of not less than \$60,000.

Six bids were received by the bid opening time on September 24. Ionic submitted the apparent low bid of \$3,939,564 for the base year and the same amount for the option year. The protester submitted the apparent second low bid of \$4,372,138 for the base year and the same amount for the option year. On September 29, the agency awarded a contract to Ionic as the low, responsive and responsible bidder.

The protester argues that the agency should have rejected Ionic's bid as nonresponsive. Specifically, the protester contends that Ionic's bid bond is of questionable enforceability because the corporate surety's power of attorney, authorizing the named attorney-in-fact to execute the bid bond on behalf of the surety, thus binding the surety to the terms of the bid bond, was a photocopied, not an original, document.

The record¹ shows that at bid opening, Ionic submitted with its bid an original bid bond in the amount of \$300,000. The bid bond contained an original signature of Ionic's principal and an original signature of the attorney-in-fact who executed the bid bond on behalf of the corporate surety. The bid bond was embossed with the surety's corporate seal. Submitted with the bid bond was a photocopy of the surety's signed and notarized power of attorney authorizing the named attorney-in-fact to execute the bid bond on the surety's behalf. The power of attorney, which was embossed with the surety's corporate seal, contained the following statement:

"Resolved, that the signatures of such directors and officers and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached."

¹The agency furnished to this Office the bid bond and power of attorney documents as submitted by Ionic with its bid at bid opening.

The determinative issue concerning the acceptability of a bid bond is whether, in the event of a default by the bidder, the contracting agency could be certain that the surety would be bound, based on the information in the possession of the agency at the time of bid opening. Global Eng'g, B-250558, Jan. 11, 1993, 93-1 CPD ¶ 31. Determining whether the surety is clearly bound is essential because under the law of suretyship, no one incurs a liability to pay the debts or to perform the duties of another unless that person expressly agrees to be bound. Regional Dev. Corp.--Recon.; Ware's Van & Storage Co., Inc.--Recon., B-251299.2; B-251431.2, Mar. 16, 1993, 93-1 CPD ¶ 238. If the agency cannot determine definitely from the documents submitted with the bid that the surety would be bound, the bid is nonresponsive and must be rejected. Id.

Here, the agency reasonably concluded, based on the bid documents, that the firm's bid bond was not of questionable enforceability. In this regard, Ionic's bid bond contained original signatures of Ionic's principal and the corporate surety's attorney-in-fact, and was embossed with the surety's corporate seal. The power of attorney, while a photocopied, as opposed to an original, document, was deemed valid and binding according to its own terms which provided that "any such power of attorney . . . bearing such facsimile [i.e., photocopied] signatures or facsimile seal shall be valid and binding upon the [surety] . . . with respect to any bond . . . to which it is attached." While the signatures and notary stamp on the power of attorney were photocopied, the surety's corporate seal was an original, further attesting to the authenticity of the document. Moreover, the agency found the bid bond and power of attorney documents to be in good order.

Based on the above-referenced language, we agree with the agency that the photocopied power of attorney submitted with Ionic's bid bond was a valid document authorizing the attorney-in-fact to execute the bid bond on behalf of the surety, thus binding the surety to the terms of the bid bond. We have no basis to question the enforceability of Ionic's bid bond or the agency's acceptance of Ionic's bid.

The protester also contends that the agency should have rejected Ionic's bid as nonresponsive because it is unbalanced.

A bid that is mathematically and materially unbalanced may not be accepted for award. Howell Constr., Inc., 66 Comp. Gen. 413 (1987), 87-1 CPD ¶ 455. A bid is mathematically unbalanced where it is based on nominal prices for some of the items and enhanced prices for other items. Sanford Cooling, B-242423, Apr. 15, 1991, 91-1 CPD ¶ 376. Where there is a reasonable doubt that acceptance of a

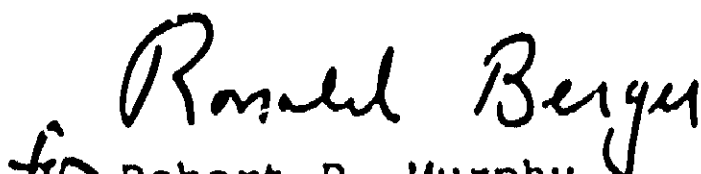
mathematically unbalanced bid will result in the lowest overall cost to the government, the bid is materially unbalanced and cannot be accepted. Id.; OMSERV Corp., B-237691, Mar. 13, 1990, 90-1 CPD ¶ 271.

With regard to estimated quantities in requirements-type solicitations, consideration of the materiality of unbalancing begins with a determination of the accuracy of the solicitation's estimates of the agency's anticipated needs. Earth Eng'g and Sciences, Inc., B-248219, July 30, 1992, 92-2 CPD ¶ 72; Duramed Homecare, 71 Comp. Gen. 193 (1992), 92-1 CPD ¶ 126. Unless it can be shown that the agency's estimates--which are supposed to be reasonably accurate representations of the agency's anticipated actual needs--are not reliable, Outer Limb, Inc., B-244227, Sept. 16, 1991, 91-2 CPD ¶ 248, a low evaluated bid under a requirements-type solicitation cannot be rejected merely because it is mathematically unbalanced since there would be no reason to believe that acceptance of the low bid would not actually result in the lowest cost to the government. DOD Contracts, Inc., B-227689.2, Dec. 15, 1987, 87-2 CPD ¶ 591.

Here, out of approximately 600 line items, the protester points to 5 line items in Ionic's bid which it believes are based on understated prices and to 7 line items which it believes are based on overstated prices. The protester compares Ionic's prices for these lines to its own prices for these line items. However, a comparison of a competitor's prices with one's own prices does not by itself establish price enhancement or that a bid is unbalanced. David Boland, Inc., B-244817, Oct. 29, 1991, 91-2 CPD ¶ 397.

Moreover, even if Ionic's bid were mathematically unbalanced, there is no evidence in the record, and the protester does not argue otherwise, that the solicitation's maximum estimated quantities for the indefinite quantity line items were not based on the best information available or were otherwise deficient. Thus, even if Ionic's bid were mathematically unbalanced, because the solicitation's maximum estimated quantities were reasonably accurate representations of the agency's anticipated actual needs, Ionic's bid cannot be materially unbalanced as there is no reasonable basis for viewing the bid as representing other than the lowest cost to the government.

Accordingly, the protest is denied.


for Robert P. Murphy
Acting General Counsel